

NO. [REDACTED]

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IN THE

United States

Office Supreme Court, U. S.

FILED

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# Supreme Court

OCTOBER TERM, 1925.

(30,835)

JAMES DICKINSON FARM MORTGAGE CO.  
and A. D. DICKINSON

*Plaintiffs in Error,*

- vs. -

GARRIE M. HARRY,

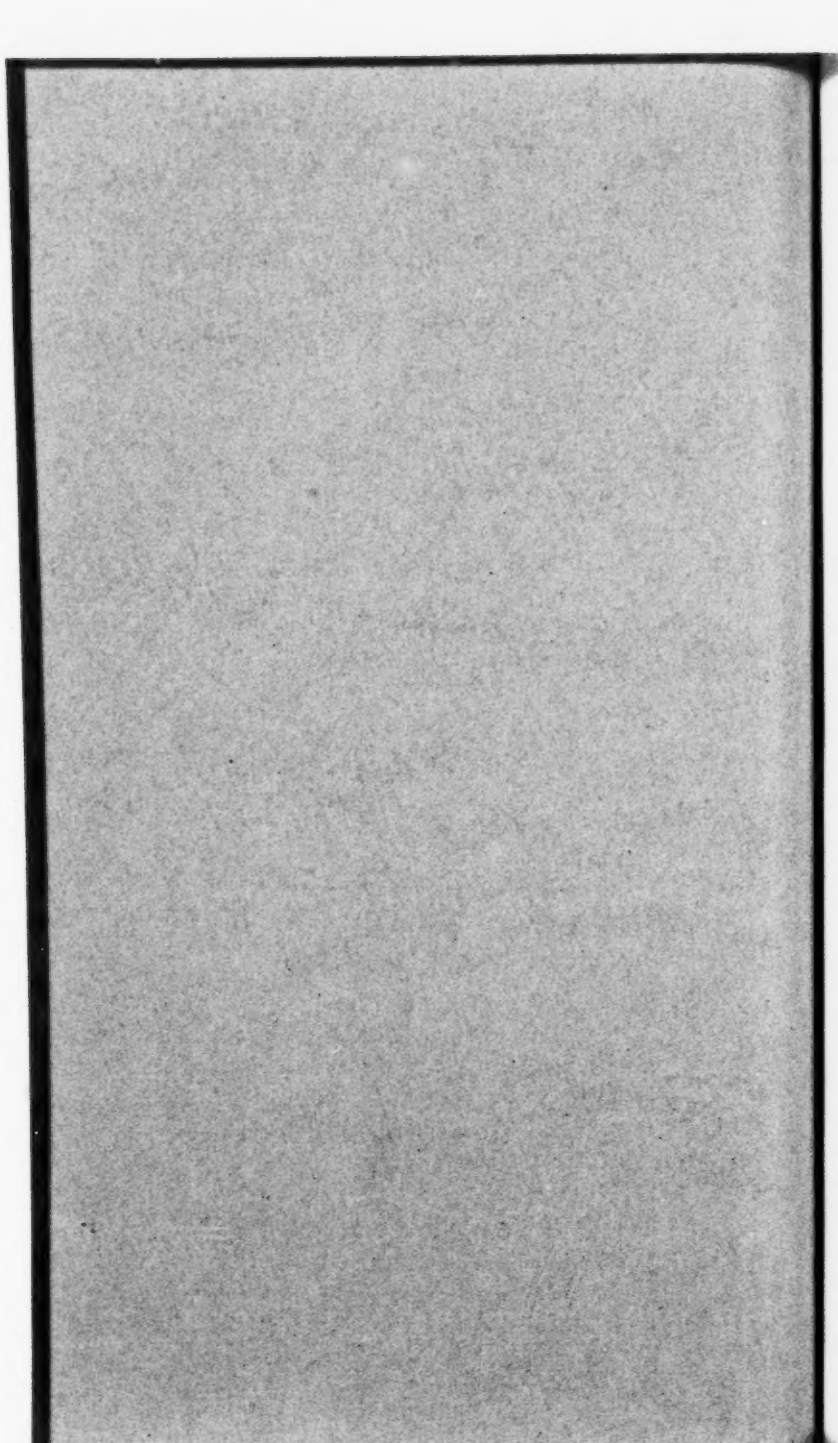
*Defendant in Error.*

ERROR TO DISTRICT COURT,  
EASTERN DISTRICT OF ILLINOIS.

HONORABLE GEORGE W. ENGLISH, *Judge.*

SUGGESTIONS BY PLAINTIFFS IN ERROR IN  
OPPOSITION TO MOTION TO DISMISS.

GEORGE F. REARICK,  
*Attorney for Plaintiffs in Error.*

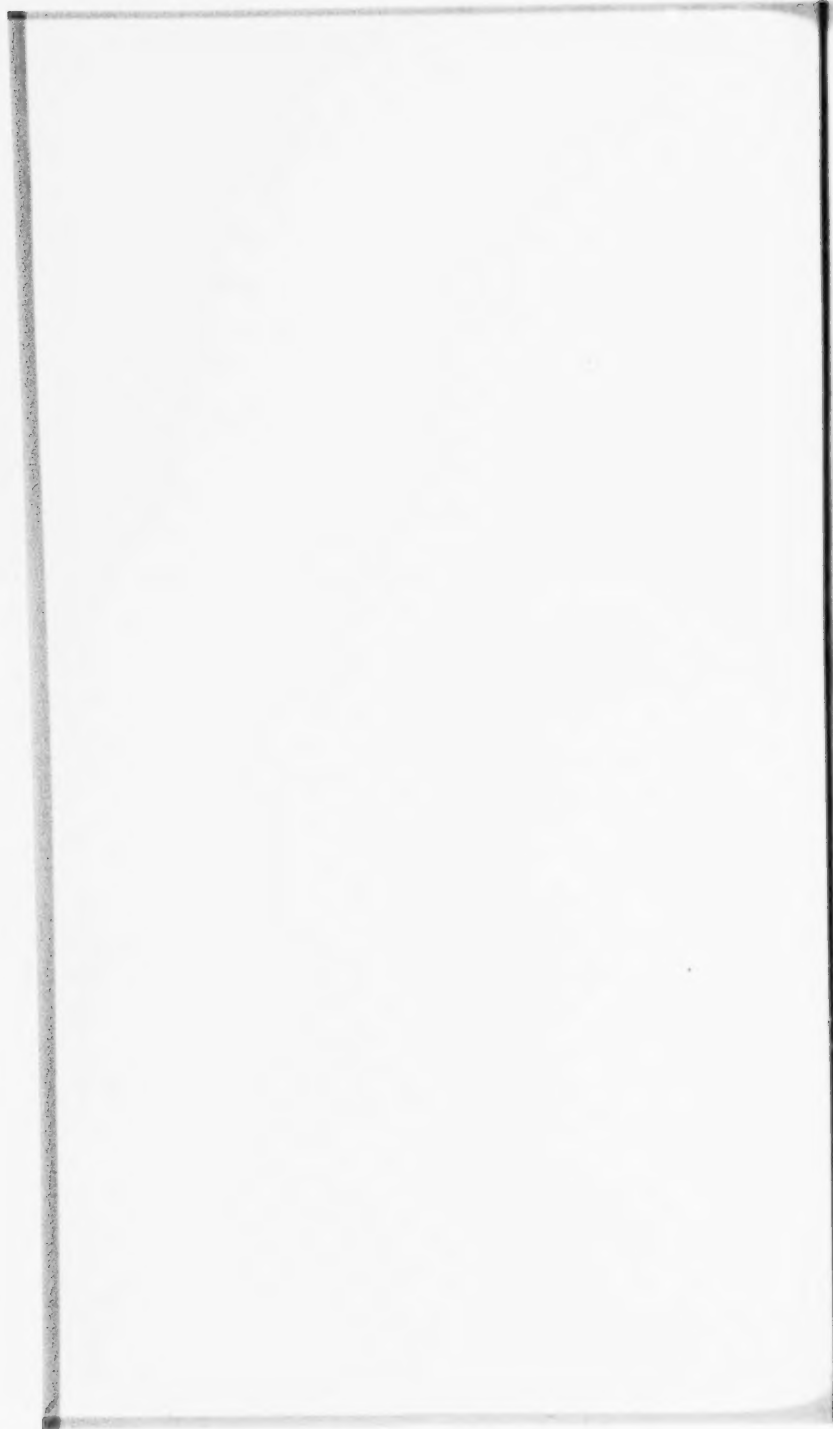


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NO. 259.

IN THE

**United States  
Supreme Court**

OCTOBER TERM, 1925.

(30,835)

**JAMES-DICKINSON FARM MORTGAGE CO.  
and A. D. DICKINSON**

*Plaintiffs-in-Error,*

- VS. -

**CARRIE M. HARRY,**

*Defendant-in-Error.*

**ERROR TO DISTRICT COURT,  
EASTERN DISTRICT OF ILLINOIS.**

**HONORABLE GEORGE W. ENGLISH, Judge.**

**SUGGESTIONS BY PLAINTIFFS IN ERROR IN  
OPPOSITION TO MOTION TO DISMISS.**

**GEORGE F. REARICK,**  
*Attorney for Plaintiffs in Error.*

MAY IT PLEASE THE COURT :

Plaintiffs in Error desire to oppose the Motion made herein to dismiss, and ask the Court to deny the same, and make the following suggestions :

I.

The grounds on which the jurisdiction of this court is founded, are set forth at page 3 of the Brief we have filed in this cause.

On page 6 we quote the language of Sec. 238 of the Judicial Code, as it stood prior to the amendment of Feb. 13, 1925, which recites that a direct review may be had in the Supreme Court, "in any case in which the constitution or law of a state is claimed to be in contravention of the constitution of the United States."

The Texas Statute which is the only foundation upon which the judgment below can be supported, is set forth at large on page 42 of our brief, and an analysis of its provisions is found on page 44.

Its constitutionality was directly challenged and our contentions were denied by the trial court.

We assume that the Court does not on this motion desire that we should enter into the argument by which the unconstitutionality is made to appear.

If the challenge is in good faith, and not frivolous, the doubt will be resolved in favor of retaining the case, for decision upon the merits.

No case can be found in the books in which this Court has sustained a similar statute.

This is not a statute which undertakes merely to define what shall be a *prima facie* case, nor one which undertakes to govern the burden of proof. Although, if such were its only scope, it could not stand, in so far as it purports to govern the procedure of a Federal Court, sitting in the State of Illinois.

The plain attempt of this statute is to create a personal liability for tort against one who is a stockholder or officer of a corporation, on no other ground than that he received some of the proceeds of a sale which was obtained by the fraud or deceit of another person—of which fraud or misrepresentation he may have been absolutely ignorant.

The language is "All persons deriving the benefit of said fraud, shall be jointly and severally liable in actual damages."

Sec. 3 of the Statute, page 42 of our brief.

By the instructions of the trial court, the jury were authorized to predicate liability against both defendants, or either, upon the mere finding that Dickinson was a stockholder of the Lone Star Immigration Co., which made the sale in question, and upon the mere finding that the corporate defendant received re-imbursement on a prior loan, made to the Loan Star Co., out of the moneys realized in this sale. Record 100.

The instructions asked by defendants, to the effect that before liability could be predicated against either defendant, it must appear that said defendant in some way par-

ticipated in the fraud, or knowingly ratified the same, were refused. Record 103.

It is thus apparent not only that the statute is in violation of the "due process" requirements of the Federal Constitution, but also that the Court actually applied and enforced these void provisions, and further that the trial Court, followed the Statute, as to measure of damages, liability for exemplary damages, and burden of proof, in a trial in a District Court of the United States, sitting in Illinois, in violation of that clause of the same Constitution, which vests the judicial power of the United States, in such Courts as Congress may create.

We submit that it is not "due process" of law, to declare a stockholder liable for damages, actual and punitive, for misrepresentations by other agents of the corporation, because such stockholder shared in corporate dividends. There must be some rational connection between the facts and the conclusion. Here the inference is a purely arbitrary mandate.

If the Court desires to go further into the question, we submit the argument and authorities at page 39 of our brief.

We also, in this connection, call attention to the fact that the Courts of Texas, have expressed a doubt as to the validity of this law.

*Krueger v. Waugh*, Tex. Civ. App., 261 S. W. 196.

And under almost identical facts have held there was



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no liability against parties who stood in substantially the same position as these defendants.

*Karlau v. James-Dickinson Co.*, Tex. Civ. App.,  
245 S. W. 1043. Same Case. 277 S. W. 173.

## II.

We have not attempted to found the jurisdiction of this Court on this Writ of Error, upon the question of jurisdiction, which might have been certified in accordance with Sec. 238 of the Judicial Code.

However, the case being properly here on other grounds, this question, as well as all others, is for decision.

In addition to the authority cited on page 6 of our brief, we refer you, if citation is required, to the following cases:

*Atlantic Coast Line v. Daughton*, 262 U. S. 413. 67  
L. Ed. 1051 page 1058.

*Northwestern Laundry v. Des Moines*, 239 U. S.  
486. 60 L. Ed. 396.

*Chappell v. United States*, 160 U. S. 499. 40 L. Ed.  
510.

## III.

May we also point out an error in the statement contained on page 5 of the Motion, when it is said:

"There is no direct Assignment of Error, raising the jurisdictional question."

On page 114 of the Record, appears an assignment in these words :

“26. The District Court was in error in holding that it had jurisdiction over the corporate defendant by virtue of the alleged service of process herein and the plea in abatement herein interposed by the corporate defendant should have been sustained.

“33. The Court should have sustained defendant's motion in Arrest of Judgment which pointed out, that the verdict and judgment herein are evidently based on the 2nd Count of the Declaration and are founded upon an alleged Statute of the State of Texas which was unconstitutional and void.

“And that the record shows no sufficient service of process upon the corporate defendant.

“And that there is no jurisdiction to enforce the liability under said Statute.

“And there is no joint liability on the part of defendants.”

That this was an oversight on the part of opposing counsel, appears on page 2 of the Motion, where it is said:

“4. It appears from the record that the question of jurisdiction over the corporate defendant, James-Dickin-

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son Farm Mortgage Company, is raised only in Assignment of Error Number 26."

We ask that the motion may be denied.

Respectfully,

*G. F. Rearick.*

GEORGE F. REARICK,  
*Attorney for Plaintiffs in Error.*